

FILED 26 DEC '12 11:52 USC-ORP

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE ☐ MEDFORD ☐ PORTLAND ☒ DIVISION

Paul John Reid Dawson #1446777  
\_\_\_\_\_  
(Enter full name of plaintiff(s))

Plaintiff(s)

v.

Dr. John Vargo, Dr. Elliot-Blakeslee, Dr. Diehl,  
Dr. Garth Gultick, NP Heidi Miller, Jane Doe nurse,  
Nurse Underhill, Jane Doe II  
\_\_\_\_\_  
(Enter full name of ALL defendant(s))

Defendant(s)

Civil Case No. 3:12-cv-02344 SI  
(to be assigned by Clerk of the Court)

PRISONER CIVIL RIGHTS  
COMPLAINT

I.

A. Have you brought any other action or appeal in a court of the United States while a prisoner?

Yes ☐

No ☒

B. If your answer to A is yes, how many? \_\_\_\_\_. Describe the lawsuit(s) in the spaces below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to the previous lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of judge to whom case was assigned: \_\_\_\_\_

Jurisdiction & Venue

This is a civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation, under  
Color of State law, of rights secured by the Constitution of the United States. The court has jurisdiction under  
28 U.S.C. Section 1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and  
2202. Plaintiff Claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and Rule  
65 of the Federal Rules of Civil Procedure. This court has Supplemental jurisdiction over plaintiff's  
state law claim under 28 U.S.C. Section 1367

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5. Disposition (Was the case dismissed? Was it appealed? Is it still pending?)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. Approximate date of filing: \_\_\_\_\_

7. Approximate date of disposition: \_\_\_\_\_

## II.

- A. Place of confinement: \_\_\_\_\_

- B. Is there a prisoner grievance procedure in this institution?

Yes ☒ No ☐

- C. Have you filed a grievance concerning the facts relating to this complaint?

Yes ☒ No ☐

If the answer is no, explain why not: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

- D. Is the grievance process completed?

Yes ☒ No ☐

## III. PARTIES

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

- A. Name of plaintiff: Paul John Reid Dawson

Security Identification No: 14467777

Address: 777 Stanton Blvd

Ontario, OR 97914

(In item B, place the full name of each defendant, his/her official position, and his/her place of employment.)

- B. Defendant Dr. John Vargo is employed as Doctor

at Oregon State Penitentiary (OSP) - He is sued in his individual capacity

Defendant J. Elliot-Blakeslee is employed as Doctor

at Snake River Correctional Institution (SRCI) - She is sued in her individual capacity

Defendant Jane Doe is employed as Nurse  
at Snake River Correctional Institution - Is sued in individual capacity

Defendant Dr. Diehl is employed as Doctor  
at Eastern Oregon Correctional Institution (EOCI) - Sued in his individual capacity

Defendant Hildi Miller is employed as Nurse Practitioner  
at Eastern Oregon Correctional Institution - Sued in her individual capacity

Additional defendants: Defendant is employed as a nurse at E.O.C.I. as Jane Doe II -

Defendant Garth Gulick is employed as a Doctor at S.R.C.I. - Each  
defendant named is being sued in their individual and official capacities.

Each additional defendant as well. All defendants have acted and continue  
to act under color of state law at all times relevant to this complaint.

#### IV. STATEMENT OF CLAIM

##### Claim I.

State what right under the Constitution, laws, or treaties of the United States has been violated.

The failure of defendants Vargo, Elliot-Blakeslee, Doe, Diehl, and Miller to properly  
diagnose plaintiff Dawson's serious medical need of a vocal cord cyst/tumor constitutes  
the tort of negligence under the law of Oregon. Causing plaintiff physical pain  
and suffering, physical injury and mental distress.

**Supporting Facts:** (State here as briefly as possible the facts of your case. Describe how each defendant is involved and when the conduct occurred. It is not necessary to give any legal arguments or cite any cases or statutes.) At all times relevant to this case Plaintiff Dawson was in the custody of  
the Oregon Department of Corrections. (ODOC)

From November 2009 through August 2011, the plaintiff signed up for sick calls at  
OSP, S.R.C.I., and E.O.C.I. Plaintiff Dawson would complain of intense ongoing pain in the  
throat and vocal cords. Plaintiff would explain that he needed to see a E.N.T.  
doctor because the pain was too low in the throat. ODOC does not have proper medical  
devices. Plaintiff was diagnosed with "Allergies" by Doctors Vargo, Elliot-Blakeslee, and Diehl.  
Nurse Doe told plaintiff to buy hard candy and sniff salt. Dr. Vargo flushed plaintiff's  
ears. During this 21 month period a cyst/tumor grew on plaintiff's vocal cord causing  
extreme pain, trouble talking, breathing, swallowing, and preventing exercise causing plaintiff to  
gain 60 pounds. Two surgeries were required along with anesthesia, intense pain meds, CO2  
lasers, steroids, liquid diets, loss of voice for over a week, numbing of throat to eat, enemas,



and loss of wages. Along with the pain, these factors affected plaintiff's daily activities significantly. Also causing extreme stress, fear, depression, and anxiety along with plaintiff's current mental illnesses. These were the factors and mental injuries plaintiff had because he might lose his voice permanently. This is a clear misdiagnosis, malpractice, and negligent act.

### Claim II.

State what right under the Constitution, laws, or treaties of the United States has been violated.

The failure of Defendants Vargo, Elliot-Blakeslee, Doe, and Miller and Diehl to properly treat Plaintiff Dawson's serious medical need due to admitted deficiencies in the prison medical system causing a higher risk and harm to plaintiff shows deliberate indifference under the 8<sup>th</sup> Amendment of the United States Constitution. This causing plaintiff physical pain and suffering, physical injury and mental distress.

**Supporting Facts:** (State here as briefly as possible the facts of your case. Describe how each defendant is involved and when the conduct occurred. It is not necessary to give any legal arguments or cite any cases or statutes.)

On or about 12-18-2009 Plaintiff went to see defendant Vargo about vocal pain. Defendant Vargo proceeded to flush plaintiff's ears with water and took down plaintiff's throat making the comment, "I can't see a problem with your vocal cords." On or about 5/27/10, Defendant Doe told plaintiff to "buy hard candy off canteen and to gargle and sniff salt water because SSCI does not have proper medicine to soothe throat pain." On 3-22-11 Defendant Elliot-Blakeslee noted plaintiff had an extreme pain when swallowing. Defendant Elliot-Blakeslee told plaintiff that she "doesn't have any equipment to view the lower throat because the prison's budget is cheap." On 7-25-11 Plaintiff told the nurse that his "voice goes away at times." Defendant Miller, on 8-9-11 stated "I highly doubt your voice disappears magically!" She also made a comment on my attempts to see a doctor or ENT on 7-25-11 saying "A doctor out there isn't gonna be able to find your disappearing voice." Defendant Diehl attended this appointment and made derisive comments "we all know your not dying". These acts of deliberate indifference allowed the cyst to grow and cause chronic pain when defendants knew there was a problem in plaintiff's vocal region and there were deficiencies in the prison's medical care system that caused a higher risk and harm to plaintiff. This caused physical and mental injuries and stress for plaintiff feared for the loss of his voice permanently.

## Claim III.

State what right under the Constitution, laws, or treaties of the United States has been violated.

By failing to inquire into essential facts that are necessary to make a medical decision, Defendants Vargo, Elliot-Blakeslee, Doe, and Miller violated the 14<sup>th</sup> Amendment of the United States Constitution and caused plaintiff pain, suffering, physical injury and emotional distress.

**Supporting Facts:** (State here as briefly as possible the facts of your case. Describe how each defendant is involved and when the conduct occurred. It is not necessary to give any legal arguments or cite any cases or statutes.)

On 12-15-09: On January 8, 2009 when plaintiff went to see Defendant Vargo about vocal pain, and using water defendant flushed; defendant said flushing the ears will help; Defendant Vargo violated plaintiff's rights.

By doing nothing at all on numerous recorded dates to address plaintiff's vocal and throat issues although noting extreme distress in plaintiff's voice; Defendant Elliot-Blakeslee violated Plaintiff Dawson's rights. By re-prescribing Augmentin after SRCI medical staff took Plaintiff off because this drug aggravated the vocal pain; Defendant Miller violated plaintiff's rights. On May 27, 2010 when Defendant Jane Doe told plaintiff to buy candy and sniff salt; Defendant Doe violated plaintiff's rights when he was seeking medical treatment for his throat. These incidents of defendants failing to inquire into facts that are necessary to make a medical decision created a worsened vocal cord injury, emotional and mental stress along with prolonged chronic pain. Plaintiff feared he would never be able to talk again. Also the loss of his skilled vocations of marketing and singing.

(If you have additional claims, describe them on another piece of paper, using the same outline.)



Claim IV

State what right under the Constitution, laws, or treaties of the United States has been violated.

By denying Plaintiff Dawson access to medical personnel who were qualified to exercise judgement about this particular medical problem for 21 months; Defendants Vargo, Elliot-Blakeslee, and Diehl violated Plaintiff Dawsons rights under the 14<sup>th</sup> Amendment of the United States. Thus causing plaintiff pain, suffering, physical injury and emotional distress.

Supporting Facts:

On or about 12-15-2009, Defendant Vargo violated plaintiffs rights by using a "popsicle stick" or tongue press to flatten plaintiffs tongue to look down his throat and saying, "Everything's fine." Defendant then denied a request for an ENT visit. On or about 3-22-11, Defendant Elliot-Blakeslee said she "doesn't have any equipment to view the lower throat because the prison budget is cheap"; defendant violated plaintiffs rights. On 5-31-11, Defendant Diehl ordered an allergy medicine for plaintiff and stating that "18 months or vocal hoarseness and pain is a normal occurrence of allergies." This violating plaintiffs rights. These incidents created a worsened vocal cord injury, emotional and mental distress along with prolonged chronic pain. Plaintiff feared that he would permanently lose his voice and his professions of marketing and singing.

Claim IV

State what right under the Constitution, laws, or treaties of the United States has been violated. - By Defendant  
 Defendant By Nurse Practitioner, Defendant Miller re-prescribing a medication that had previously caused the plaintiff  
 extreme pain (Augmentin) in the problematic area; Defendant Miller showed deliberate indifference under the  
 8<sup>th</sup> Amendment of the Constitution of the United States of America. This causing Plaintiff Physical Pain and  
 Suffering and emotional and mental distress

### Supporting Facts:

On or about March 22, 2011, Plaintiff Dawson reported to medical staff that the drug Augmentin was  
 not helpful at all and worsened his vocal pain and throat pain and made swallowing very painful.  
 Medical staff discontinued this drug to protect Plaintiff. On or about August 26, 2011, Defendant  
 Miller re-prescribed this harmful medication to Plaintiff knowing that he suffered during the last course.  
 On September 6, 2011, Plaintiff reported to medical staff that his throat is getting worse on the  
 drug and he is in pain more extreme than usual. He was ordered to stop taking Augmentin immediately.  
 Defendant Miller showed deliberate indifference to Plaintiff's serious medical need, thus violating his  
 8<sup>th</sup> Amendment rights. This incident caused a worsened injury, physical pain and suffering and mental  
 and emotional distress for Plaintiff feared he would lose his voice permanently along with his skilled  
 trades of marketing and recording arts. Plaintiff had anxiety attacks that Defendant Miller would  
 continue to provide medications that would harm him. - On June 1, 2010, Defendant Elliot Blakeslee prescribed  
 plaintiff an allergy medicine called Zyrtec. On January 27, 2011, SSCI staff removed patient Dawson from Zyrtec because  
 it proved ineffective and made voice hurt more. On May 31, 2011, Defendant Diehl re-prescribed Zyrtec, disregarding  
 plaintiff's health and violating all above listed rights as Defendant Miller and causing the same physical and emotional  
 damage.



Claim VI

State what right under the Constitution, laws, or treaties of the United States has been violated.

By informing Plaintiff Dawson that she couldn't treat his gums because of his race, thus not providing adequate medical care; Defendant Doe II showed discrimination under the 14<sup>th</sup> Amendment of the United States Constitution and caused Plaintiff Dawson Pain, suffering, Physical injury and emotional distress.

Supporting facts:

On June 28, 2011 Plaintiff Dawson signed up for sick call. Defendant Doe II was assigned nurse. Plaintiff explained to defendant that his vocal cords were burning and the pain was shooting up into the gums. Plaintiff thought that toothpaste might help because the SHU/DSU only provided baking soda for oral cleansing. Defendant made the comment, "Well you're very black and I don't know how to treat these kind of gums. Your gums are different..." Defendant also wrote similar statement in Plaintiff Dawson's medical file. This racial discrimination affected plaintiff's health by causing a worsened vocal cord injury, emotional and mental distress because Plaintiff feared that he would continue to receive inadequate medical care based on skin color alone. This also caused prolonged chronic pain.

State what right Under the Constitution, laws, or treaties of the United States has been violated.

Defendant Garth Gulick showed deliberate indifference towards a serious medical need by failing to carry out medical orders under the 8<sup>th</sup> Amendment of the Constitution of the United States. Thus causing plaintiff pain, suffering, physical injury and emotional distress.

### Supporting facts:

On June 12, 2012, Outside ENT doctor learned that Plaintiff Dawson's previously cystic vocal cord was now partially paralyzed. The ENT said this condition is rare and wanted plaintiff to get a CT Scan and begin taking Omeprazole to combat any acid build-up around the vocal cords; thus preventing pain. Plaintiff was moved to a different prison the following day. Upon arrival plaintiff immediately began asking for his Omeprazole at sick call. Nurses continued to forward requests to Defendant Gulick and these numerous requests were ignored. Dawson continued to ask two times a week, as that is the maximum amount of sick call chart reviews allowed per week. On or about September 5, 2012, some eighty-five days later, Defendant decided to fill Plaintiff's Omeprazole prescription. By failing to carry out physicians orders to provide a medication that would ease vocal pain and protect plaintiff from further harm; Defendant Gulick created a worsened vocal cord injury and emotional and mental distress, for patient feared he would never get helpful medicine and lose his vocal cord permanently. This incident also caused chronic pain and prolonged chronic pain.

Claim VIII

State what right under the Constitution, laws, or treaties of the United States has been violated

By Defendants Elliot-Blakeslee, Doe, and Diehl misdiagnosing plaintiff with allergies when there was a cyst/tumor growing in his throat; Defendants violated Plaintiff's rights under the 14<sup>th</sup> Amendment of the United States. This causing plaintiff chronic pain, emotional distress, and mental distress.

### Supporting facts:

On May 27, 2010, Defendant Doe diagnosed Plaintiff with allergies and gave recommendation for treatment. On June 1, 2010, Defendant Elliot-Blakeslee diagnosed plaintiff with allergies and prescribed Zyrtec, an allergy medication. On May 31, 2011, Defendant Diehl diagnosed Plaintiff with allergies and prescribed Zyrtec. Plaintiff was found to never have had allergies, rather, a cyst/tumor growing on his vocal cord. This incident caused a worsened vocal cord and physical injury, mental and emotional distress along with prolonged chronic pain. Plaintiff feared he would never get a proper diagnosis and would lose his voice permanently.



state what right under the Constitution, laws, or treaties of the United States has been violated.  
 By Defendants Vargo, Elliot-Blakeslee, Doe, Miller, Diehl failing to provide Plaintiff with timely treatment of medical care which led to a physical injury of the vocal cord by partial paralysis; defendants violated the 14<sup>th</sup> Amendment of the Constitution of the United States. This causing plaintiff chronic pain, emotional and mental distress.

### Supporting facts:

Causation. After discovering the cyst plaintiff was treated "ASAP" as outside physician ordered. In April, 2012 Plaintiff Dawson experienced pain and returned to physician where he learned that the previously cystic vocal cord was now partially paralyzed. This rare diagnosis required plaintiff to travel to Caldwell, Idaho for testing and multiple trips from SRCI to EOCI totalling hundreds of miles. The partially paralyzed vocal cord causes plaintiff pain while talking or singing for more than 15 minutes. Plaintiff's outside careers were marketing and recording arts. Both vocations require heavy use of the vocal cords. Patient can no longer continue in those career fields due to above named defendants delay in getting Plaintiff to a ENT. The delay was 21 months. Not being able to work these skilled professions again is very mentally and physically depressing and causes the plaintiff panic attacks. There is also chronic pain. Plaintiff Dawson has no plain or adequate or complete remedy to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of defendants unless this court grants the declaratory, monetary, and injunctive relief which plaintiff seeks.

V. Relief

State briefly exactly relief you are seeking. Make no legal argument. Cite no cases or statutes.

WHEREFORE, plaintiff respectfully prays that this Court enter judgment granting plaintiff:

- A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States and State laws.
- A preliminary and permanent injunction ordering defendants to forward all Ear, Nose, and Throat complaints to a qualified physician for review. Thus preventing future violations in ODOC.
- A preliminary and permanent injunction ordering defendant Doe II to take medical diversity training for racial purposes.
- Award compensatory damages in the following amounts:
  - \$483,212 jointly and severally against defendants Vargo, Elliot-Blakeslee, Diehl, and Miller for their failure to provide adequate medical care to plaintiff which caused physical and emotional injuries and loss of future wages.
  - \$152,012 jointly and severally against defendants Doe and Doe II from their failing to provide adequate medical care to plaintiff and racial discrimination which caused plaintiff physical and emotional injuries and loss of future wages.
  - \$32,005 jointly and severally against defendant Gulick for failing to follow medical procedures which caused patient physical and emotional injuries and loss of future wages.
- Award punitive damages in the following amounts:
  - \$129,806 each against defendants Vargo, Elliot-Blakeslee, Diehl, and Miller;
  - \$34,210 against each defendant Doe and Doe II;
  - \$10,215 each against defendant Gulick
- A jury trial on all issues triable by jury
- Plaintiff's costs in this suit
- Any additional relief this Court deems just.

V. RELIEF

State briefly exactly relief you are seeking. Make no legal arguments. Cite no cases or statutes.

- Issue a declaration
- Issue an injunction
- Compensatory damages
- Punitive damages
- Additional relief, jury, costs
- See previous page for details.

SIGNED this 19 day of December, 2012.

Paul R. Dausse

(Signature of Plaintiff(s))